



BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300

guy.hicks@bellsouth.com

REC'D IN
REGULATORY AUTH.

*02 JUL 8 JULY 8, 2002

OFFICE OF THE
EXECUTIVE SECRETARY

Guy M. Hicks
General Counsel

615 214 6301
Fax 615 214 7406

VIA HAND DELIVERY

Hon. Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Docket to Determine the Compliance of BellSouth
Telecommunications, Inc.'s Operations Support Systems with State
and Federal Regulations*
Docket No. 01-00362

Dear Chairman Kyle:

Enclosed are the original and fourteen copies of BellSouth's Motion for Reconsideration. Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH:ch

453840

POSTED
7/9/02

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations*

Docket No. 01-00362

**BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION
FOR RECONSIDERATION**

BellSouth Telecommunications, Inc. ("BellSouth") hereby files its Motion for Reconsideration in the above-referenced docket and asks the Authority to reconsider the *Order Resolving Phase I Issues of Regionality*, (the "Order") dated June 21, 2002, as follows:

I. The Order Is Contrary To Authoritative Legal Precedent.

On May 15, 2002, the Federal Communications Commission ("FCC") issued an order approving BellSouth's applications for interLATA relief in Georgia and Louisiana. As part of that decision, the FCC concluded that BellSouth's OSS in Georgia and Louisiana are the same. Specifically, the FCC held that

We conclude that BellSouth, through the PwC review and other aspects of its application, provides sufficient evidence that its electronic processes are the same in Georgia and Louisiana...in addition to PwC's review, the record indicates that BellSouth OSS for pre-ordering and ordering functions does not distinguish between Georgia and Louisiana.

Georgia/Louisiana Order, ¶ 110. In addition, the FCC “reject[ed] competitive LEC claims that BellSouth’s OSS are not the same in Georgia and Louisiana.” *Id.* at ¶

111. Finally, the FCC held that:

Accordingly, we find that BellSouth, through the PwC audit and its attestation examination, provides evidence that its OSS in Georgia are substantially the same as the OSS in Louisiana. We shall consider BellSouth’s commercial OSS performance in Georgia and the Georgia third-party test to support the Louisiana application and rely on Louisiana performance to support the Georgia application. In addition, because the OSS are the same in both states, where low volumes in one state yield inconclusive or inconsistent information concerning BellSouth’s compliance with the competitive checklist, we can examine data reflecting BellSouth’s performance in the other state.¹

Id.

The FCC’s conclusion in the Georgia/Louisiana case that BellSouth’s OSS are the same in Georgia and Louisiana provides authoritative legal precedent upon which the Authority should rely. The Authority’s Order gives no serious consideration, let alone deference, to the FCC’s conclusion. The FCC reviewed virtually identical evidence on regionality as that presented to the Authority in this docket, including reviewing the OSS of one state that uses the DOE system and one state that uses the SONGS system. The FCC applied its definition of “regionality” to the evidence presented to it and concluded that BellSouth’s OSS were the same in two of its states. By reaching a vastly different conclusion, the

¹ Chairman Kyle did not vote with the majority. Her comments during the Authority’s deliberations on May 21, 2002 recognized the importance of the FCC’S findings that BellSouth’s OSS are regional. References herein to the Authority’s Order are to the opinion of the two former Directors who signed the June 28, 2002 Order.

conclusion that BellSouth's billing systems are not regional is based, in part, on a conclusion that BellSouth did not demonstrate the regionality of "assignment of responsibility for function," and "compliance with OBF guidelines," neither of which are components of the billing processes.

These obvious flaws in the Authority's analysis indicate that the Authority did not apply the correct legal standard to the evidence before it, as set forth in the FCC's *Kansas/Oklahoma Order* and recent *Georgia/Louisiana Order*. The regionality of BellSouth's performance measurement plan has no bearing on the question of whether BellSouth's pre-ordering OSS is regional. Likewise, BellSouth's compliance with OBF guidelines, while arguably relevant to a discussion of BellSouth's compliance with the competitive checklist, has no relevance to a determination of the regionality of BellSouth's billing systems. The lack of legal analysis in the Order, in conjunction with the fact that the rationale cited for the conclusions reached, in many instances, bears no relation whatsoever to the conclusions, supports BellSouth's Motion for Reconsideration.

III. In Those Cases In Which An Explicit Legal Standard Is Applied, The Legal Standard Is Incorrect.

A. The Authority cited an incorrect legal standard of review.

In its Order, the Authority cited an incorrect standard of review for the issues before it. The Order states that during deliberations, the "Directors then turned to consideration of whether BellSouth established that it fulfilled its duty to provide wholesale services to competitors in a manner and quality that is the same

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations*

Docket No. 01-00362

**BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION
FOR RECONSIDERATION**

BellSouth Telecommunications, Inc. ("BellSouth") hereby files its Motion for Reconsideration in the above-referenced docket and asks the Authority to reconsider the *Order Resolving Phase I Issues of Regionality*, (the "Order") dated June 21, 2002, as follows:

I. The Order Is Contrary To Authoritative Legal Precedent.

On May 15, 2002, the Federal Communications Commission ("FCC") issued an order approving BellSouth's applications for interLATA relief in Georgia and Louisiana. As part of that decision, the FCC concluded that BellSouth's OSS in Georgia and Louisiana are the same. Specifically, the FCC held that

We conclude that BellSouth, through the PwC review and other aspects of its application, provides sufficient evidence that its electronic processes are the same in Georgia and Louisiana...in addition to PwC's review, the record indicates that BellSouth OSS for pre-ordering and ordering functions does not distinguish between Georgia and Louisiana.

Georgia/Louisiana Order, ¶ 110. In addition, the FCC “reject[ed] competitive LEC claims that BellSouth’s OSS are not the same in Georgia and Louisiana.” *Id.* at ¶

111. Finally, the FCC held that:

Accordingly, we find that BellSouth, through the PwC audit and its attestation examination, provides evidence that its OSS in Georgia are substantially the same as the OSS in Louisiana. We shall consider BellSouth’s commercial OSS performance in Georgia and the Georgia third-party test to support the Louisiana application and rely on Louisiana performance to support the Georgia application. In addition, because the OSS are the same in both states, where low volumes in one state yield inconclusive or inconsistent information concerning BellSouth’s compliance with the competitive checklist, we can examine data reflecting BellSouth’s performance in the other state.¹

Id.

The FCC’s conclusion in the Georgia/Louisiana case that BellSouth’s OSS are the same in Georgia and Louisiana provides authoritative legal precedent upon which the Authority should rely. The Authority’s Order gives no serious consideration, let alone deference, to the FCC’s conclusion. The FCC reviewed virtually identical evidence on regionality as that presented to the Authority in this docket, including reviewing the OSS of one state that uses the DOE system and one state that uses the SONGS system. The FCC applied its definition of “regionality” to the evidence presented to it and concluded that BellSouth’s OSS were the same in two of its states. By reaching a vastly different conclusion, the

¹ Chairman Kyle did not vote with the majority. Her comments during the Authority’s deliberations on May 21, 2002 recognized the importance of the FCC’S findings that BellSouth’s OSS are regional. References herein to the Authority’s Order are to the opinion of the two former Directors who signed the June 28, 2002 Order.

Authority has misapplied relevant legal precedent and thus should reconsider its decision.

II. The Order Lacks An Appropriate Analysis Of The Legal Standard Applied.

In large portions of its decision, the Authority failed to provide any legal basis whatsoever for its conclusion that BellSouth's OSS were not regional. For example, the Authority concluded that BellSouth's pre-ordering OSS were not regionally based, in part, on an alleged lack of evidence on the regionality of "CLEC Reports" and the "Performance Measurement Plan." While it is not entirely clear to which "CLEC Reports" the Authority is referring, it seems that it might be referring to the CLEC-specific data reports available to each CLEC to review its CLEC-specific performance data. Neither these reports, nor the performance measurement plan, have anything to do with BellSouth's pre-ordering OSS. Consequently, there is no nexus whatsoever between the rationale cited by the Authority (namely that BellSouth failed to produce evidence of the regionality of its CLEC reports and its performance measurement plan) and the conclusion that BellSouth's pre-ordering OSS are not regional. A similar disconnect exists between the Authority's conclusion that BellSouth's ordering OSS are not regional, and the alleged basis for the decision, namely that BellSouth failed to present evidence on the regionality of its "Performance Measurement Plan" and the "BellSouth Force Models," neither of which is a "component of its ordering system." *Order*, at 37. The Authority's billing analysis reflects the same critical flaws in that the

conclusion that BellSouth's billing systems are not regional is based, in part, on a conclusion that BellSouth did not demonstrate the regionality of "assignment of responsibility for function," and "compliance with OBF guidelines," neither of which are components of the billing processes.

These obvious flaws in the Authority's analysis indicate that the Authority did not apply the correct legal standard to the evidence before it, as set forth in the FCC's *Kansas/Oklahoma Order* and recent *Georgia/Louisiana Order*. The regionality of BellSouth's performance measurement plan has no bearing on the question of whether BellSouth's pre-ordering OSS is regional. Likewise, BellSouth's compliance with OBF guidelines, while arguably relevant to a discussion of BellSouth's compliance with the competitive checklist, has no relevance to a determination of the regionality of BellSouth's billing systems. The lack of legal analysis in the Order, in conjunction with the fact that the rationale cited for the conclusions reached, in many instances, bears no relation whatsoever to the conclusions, supports BellSouth's Motion for Reconsideration.

III. In Those Cases In Which An Explicit Legal Standard Is Applied, The Legal Standard Is Incorrect.

A. The Authority cited an incorrect legal standard of review.

In its Order, the Authority cited an incorrect standard of review for the issues before it. The Order states that during deliberations, the "Directors then turned to consideration of whether BellSouth established that it fulfilled its duty to provide wholesale services to competitors in a manner and quality that is the same

in all material respects as equivalent services that BellSouth itself uses to provide retail services.” *Order*, at 35. The Order also states that “BellSouth elected to demonstrate that it allowed nondiscriminatory access to its network elements by showing that its systems are the same in all material respects to those systems or processes that have been tested or are being tested by an independent third party in Georgia and Florida.” *Id.* These statements are incorrect for three reasons. First, as a result of the Hearing Officer’s rulings, this phase of the case did not address, and BellSouth was not permitted to present evidence on, the issue of whether it provides non-discriminatory access to its OSS.² The issue in Phase I was limited to whether BellSouth’s OSS are regional. Consequently, the Order simply does not accurately reflect the issue that the Authority considered, i.e., while the purpose of Phase 1 was, ostensibly, to determine the regionality of BellSouth’s system, the Authority’s own directives and orders prevented that from happening – a perverse result that alone invalidates the Authority’s June 21, 2002 Order. Second, the Order implies that BellSouth intended to prove its compliance with Checklist Item 2 solely through reliance on a third party test in another state. This also is incorrect in that BellSouth intends to prove its case, at the appropriate time, based primarily on actual commercial usage, as was explained numerous times during the pendency of this action. Finally, the Order implies that BellSouth intended to rely on the Florida third party test. Again, BellSouth informed the

² Much of the evidence BellSouth tried to submit was stricken, over BellSouth’s objection, based on the Hearing Officer’s narrow reading of the issues list.

Authority on numerous occasions of its present intention to rely, to the extent necessary, on the Georgia third party test.

B. The Authority applied an incorrect legal standard in its analysis of the issue.

In those instances in which the Authority applied an explicit legal standard to the evidence before it, the Authority applied an incorrect legal standard. The FCC has set forth an explicit roadmap for Section 271 applicants to follow to prove that their OSS are regional. The FCC explicitly defined "the kind of evidentiary showing that will be expected of applicants in the future" who seek to make a regionality showing. The FCC further stated that "[b]y explaining clearly what types of evidence we have found to be persuasive in this instance, we are establishing a roadmap that can be followed by other applicants."³

Because the FCC has explicitly defined the requirements of a regionality showing, the evidence in this proceeding clearly should have been reviewed in that context. It was not.

To demonstrate regionality, a BOC must show that it provides wholesale services to competing carriers in its various states through one OSS "using common interfaces, systems, procedures and, to a large extent, common personnel." *Kansas/Oklahoma Order*, at 107. A BOC may demonstrate either that competing carriers in its various states share the use of a single OSS (meaning "a common set of processes, business rules, interfaces, systems and, in many instances, even personnel"); or that the OSS "reasonably can be expected to

³ *SWBT Kansas/Oklahoma Order*, at ¶110.

behave the same way in all three states." *Id.* at 111. A BOC must make this showing for both the manual, as well as the mechanized aspects of its OSS. *Id.* On the mechanized side, a BOC must show that the key interfaces used by CLECs to submit LSRs to the BOC are the same region-wide (in other words that a CLEC can use one interface to submit orders for any state in the region without state-specific modifications). *Id.* at 114.

For the manual aspects of its OSS, a BOC must show that "the personnel involved in actual provisioning and maintenance/repair of CLEC orders in Kansas and Oklahoma will do their jobs in the same manner as those in Texas." *Id.* at 113. The FCC relied on evidence that certain functions were performed out of region-wide work centers; that state-specific operations use the same systems and same procedures region-wide; personnel receive the same training region-wide; and that there is a common organizational structure region-wide. The FCC concluded that, based on this evidence, "it is reasonable to conclude that the existence of these similarities will result in similar performance." *Id.* at 113.

The Authority disregarded this roadmap in its Order. Rather, the Authority applied its own incorrect standard, a standard that necessitated a showing that "BellSouth's systems produced substantially the same results" to find BellSouth's OSS regional. *Order*, at 37; *see also Order*, at 38; 41. Simply, the FCC does not require such a showing. This is demonstrated most clearly by the fact that BellSouth did not present such evidence to the FCC as part of its Georgia and Louisiana applications. Moreover, as even AT&T admitted, the FCC did not look at

any comparative data in support of its regionality finding in the Kansas/Oklahoma application. Tr. at IVC, 145-146 (Bradbury). Consequently, the Authority's legal analysis is clearly flawed and should be reconsidered.

IV. The Order Is Based On A Misinterpretation Of The Evidence.

A. The Authority's conclusion that BellSouth failed to meet its burden of proof is flawed.

Throughout its Order, the Authority states that BellSouth "failed to provide evidence to support its claim of regionality" for the various parts of its OSS. This conclusion is incorrect for those items that are relevant to an assessment of the regionality of BellSouth's OSS. For example, under pre-ordering, the Authority found that BellSouth had not provided evidence of the regionality of the following:

PRE-ORDERING	
Fax Server	Ainsworth, Direct at 9; Tr. at IVC, 188 (Bradbury) ("all three LCSCs utilize the same systems...")
EXACT	Discussion stricken by TRA order
CLEC Reports	Not relevant to pre-ordering
Capacity Management	Pate, Direct at 21
Force Models	Ainsworth, Direct at 5, 10
ISO Quality System	Ainsworth, Direct at 16, 17
Performance Measurement Plan	Not relevant to pre-ordering OSS

As is clear from this list, one of the items cited by the Authority was discussed in testimony that the TRA struck, over BellSouth's objection, from the record. In other instances, the items listed are not a part of BellSouth's pre-ordering OSS (such as a performance measurement plan). For the remaining items, BellSouth did present evidence in the record on the issue cited by the Authority; the Authority, however, apparently chose to ignore such evidence.

The same analysis holds true for the remaining areas cited by the Authority, as the chart below demonstrates:

ORDERING	
Electronic legacy systems	Pate, Direct at 21
Manual Legacy Work Groups	Pate, Direct at 21 (all legacy systems are regional)
Corporate Real Estate Process Flow	Not part of BellSouth's OSS (methods used by BellSouth to purchase corporate real estate – cited in Final Report in context of collocation)
CLEC Reports	Not relevant to ordering OSS
Force Models	Ainsworth, Direct at 5, 10, 11
Performance Measurement Plan	Not relevant to ordering OSS
API Guide	Pate, Direct at 12 (BellSouth provides one regional set of user guides) ⁴
RoboTAG Users Guide	Pate, Direct at 12 (BellSouth provides one regional set of user guides)
LENS User Guide	Pate, Direct at 14-15 (BellSouth provides one regional set of user guides)
EDI Specifications	Stricken by TRA Order ⁵
Products and Services Interval Guide	Pate, Direct at 14-15; AT&T agrees BellSouth's processes and its business rules are regional. Tr. at IVC, 194.
LISC	Ainsworth, Direct at 13-14
Business Rules Data Dictionary	Pate, Direct 14-15; AT&T agrees BellSouth's processes and its business rules are regional. Tr. at IVC, 194.
PROVISIONING	
WMC	Heartley Direct, at 5-6 ("the functions performed in the WMC are identical to those used in the WMC assigned to other states in the region.")
CPG	Heartley, Direct at 8-9

⁴ The API Guide applies to TAG which is an electronic interface that provides a standard Application Programming Interface ("API") to BellSouth's pre-ordering and ordering OSS. (Pate, Direct at 12). The TRA found TAG to be regional, and the API is the interface used by TAG.

⁵ Although the TRA struck the testimony on this point, it stands to reason that because the TRA found the EDI system to be regional (*Order*, at 37), it also should conclude that the specifications for the system are regional.

AFIG	Heartley, Direct at 7-8
BellSouth SQM	Not relevant to provisioning OSS
Central Office Methods and Procedures	Heartley, Direct at 8 (the policies and methods and procedures for the network organization are developed and applied on a region-wide basis).
CLEC Facilities-Based Advisory Guide	Pate, Direct at 14-15
CLEC Report on BellSouth's website	Not relevant to provisioning OSS
CCSS	Not part of BellSouth's OSS ("Common Channel Signaling System")
CRSG Methods and Procedures	Ainsworth, Direct at 16 (CRSG "serves all CLECs across the nine-state area using the same methods, procedures and processes in providing this support"); AT&T agrees BellSouth's processes and its business rules are regional. Tr. at IVC, 194.
DSAP	Pate, Direct at 21-22 (legacy systems are regional)
EXACT	Discussion stricken by TRA order
Job Aid for CLEC Pending Facilities Report on BellSouth's website	Pate, Direct at 14-15
LEO	Ainsworth, Direct at 10; AT&T agrees highly regional. Tr. at Vol. IVC, at 194.
LIST	Pate, Direct at 21 (legacy systems are regional)
LNP Gateway	Pate generally (CLEC OSS are the same)
LON	Ainsworth, Direct at 9. Tr. at IVC, 188 (all three LCSCs utilize the same systems, methods and procedures for conducting CLEC pre-ordering and ordering functions).
NISC	Ainsworth, generally (provisioning centers are regional)
NISC Methods and Procedures	Ainsworth, generally (provisioning centers are regional)
ORBIT	BellSouth database on intranet and not part of BellSouth's OSS
Pending Order Status Job Aid	Pate, Direct at 14
Products and Services Interval Guide	Pate, Direct at 14
RNS	Pate, Direct at 19
ROS	Pate, Direct at 19
SOAC	Heartley, Direct at 14
SOCS	Heartley, Direct at 15 (Bradbury could remember no reason why

	SOCS wasn't "highly regional.") Tr. at IVD, 229.
SWITCH	Heartley, Direct at 13
API Guide	Pate, Direct at 10 (BellSouth provides one regional set of user guides)
Technicians Methods and Procedures	Heartley, Direct at 8-10 (The policies and methods and procedures for the network organization are developed and applied on a region-wide basis; BellSouth uses the same training for network personnel throughout its nine-state region.)
TIRKS	Heartley, Direct at 13, 16
UNE Center Methods and Procedures	Ainsworth, generally (methods and procedures are developed and applied on a region-wide basis)
WFA log notes	Heartley, Direct at 12-13 (discussing regionality of WFA)
BILLING AND COLLECTIONS	
ACD	Not part of BellSouth's OSS (sorts calls in the LCSC)
Assignment for responsibility for function	Not relevant to regionality
BDATS	Not part of BellSouth's OSS (used by bill dispute centers to track disputes)
BIBS	Scollard, Direct at 12-14 ("In CRIS, CABS and BIBS, the same physical software that processes transactions and creates invoices in Georgia performs these same functions in Tennessee and all other states in BellSouth's region.")
BOCRIS	Scollard, Direct at 12-14 (subsystem of CRIS)
CABS	Scollard, Direct at 12-14 ("In CRIS, CABS and BIBS, the same physical software that processes transactions and creates invoices in Georgia performs these same functions in Tennessee and all other states in BellSouth's region.")
CMIA	No such system exists; CDIA is the Corporate Document Information Access which is a database on BellSouth intranet and not part of OSS
CMTS	Not part of BellSouth's OSS (system that

	tracks change requests for BellSouth's billing systems)
Compliance with OBF Guidelines	Not relevant to regionality
Connect Direct	Not part of BellSouth's OSS
CRIS	Scollard, Direct at 12-14 ("In CRIS, CABS and BIBS, the same physical software that processes transactions and creates invoices in Georgia performs these same functions in Tennessee and all other states in BellSouth's region.")
Customer Internet documentation	Scollard, Direct at 13 (all billing methods and procedures are developed and utilized on a region-wide basis)
ICABS	Scollard, Direct at 12-14 (subsystem of CABS)
Internet documentation on bill resend process	Scollard, Direct at 13 (all billing methods and procedures are developed and utilized on a region-wide basis).
MAINTENANCE AND REPAIR	
CO Methods and Procedures	Heartley, Direct at 8
CLEC TAFI	Pate, Direct at 10; AT&T admitted TAFI and ECTA are "highly regional." Tr. at Vol. IVD, 194
ECTA	Pate, Direct at 10; AT&T admitted TAFI and ECTA are "highly regional." Tr. at Vol. IVD, 194
I&M Methods and Procedures	Heartley, Direct at 16-17
ISO 9002 Audit	Ainsworth, Direct at 16-17
Joint Implementation Agreement for ECTA	Not relevant to regionality - BST/CLEC Agreement
LMOS	Heartley, Direct at 17 ("the region-wide loop maintenance operations system (LMOS) is used to register the trouble report.")
Operational Understanding	Unclear
RCMAG Methods and Procedures	Ainsworth generally (all provisioning centers are regional)
TAFI	Pate, Direct at 10
UNE Methods and Procedures	Ainsworth generally (all methods and procedures are developed and used on a region-wide basis)
WMC Methods and Procedures	Heartley, Direct at 6

As this chart makes clear, BellSouth provided ample evidence of the regionality of its OSS. In many instances cited by the Authority, BellSouth provided specific evidence of the regionality of the item. While BellSouth did not mention every system, process and document that constitute BellSouth's OSS by name (a task that was not required and which would have been impossible as a practical matter), BellSouth met its burden of proof with respect to all of the systems, processes and documents cited by the Authority in its order. Importantly, AT&T and the other CLECs did not challenge the regionality of the vast majority of items identified by the Authority; to the contrary, AT&T actually agreed with BellSouth's position in many instances.⁶ For these reasons, the Authority should reconsider its clearly-erroneous conclusion that "BellSouth failed to provide any evidence to support its claim of regionality for many methods, processes and systems identified in the Master Test Plans..." (Order, at 36.)

B. The Authority's reliance on the "empirical analysis" of BellSouth's flow-through data offends due process.

During the Authority's deliberations on May 21, 2002, Director Greer produced, for the first time, what the Order characterizes as an "empirical analysis" of OSS performance data. Relying on this analysis, a majority of the Directors found that much of BellSouth's OSS are not regional. BellSouth was not afforded any opportunity to determine the source or credibility of the analysis or otherwise comment on the analysis prior to its forming a basis for the TRA's decision that much of BellSouth's OSS had not been shown to be regional. Nor was BellSouth

⁶ See BellSouth's Post-Hearing Brief at pages 1-24. A copy of the Brief is attached. It provides background and further analysis of the regionality issue.

afforded any opportunity whatsoever to attempt to question the origin of the report, conduct cross-examination with respect to the analysis, or challenge the rationality of the conclusions presented in the analysis.⁷ To be clear, BellSouth disagrees strongly with this purported "analysis" and the conclusion erroneously drawn from it.

The Tennessee Court of Appeals has spoken with respect to the basic due process requirements implicated by the reliance upon the "empirical analysis". In *Consumer Advocate v. TRA and United Cities Gas Company, Inc.*, No. 01-A-01-9606-BC-00286 1997 W.L. 92079, Tenn. Ct. App. March 5, 1997, the Court held that "almost any matter relevant to the pending issue may be considered, provided interested parties are given adequate notice of the matter to be considered and full opportunity to interrogate, cross-examine and impeach the source of information and to contradict the information." (emphasis added.) In that case, the Tennessee Public Service Commission considered a report of a Commission consultant despite the objections of the Consumer Advocate that it had been afforded no opportunity to impeach the report. The Court concluded that the Commission committed a violation of basic principles of fairness in failing to afford the Consumer Advocate reasonable, timely access to the materials to be considered, and reasonable opportunity to cross-examine or otherwise impeach the origin of such materials. Like the report improperly relied upon by the Commission in the *United Cities Gas* case, the "empirical analysis" relied upon by the Authority in its June 21, 2002 Order was not made available for impeachment or cross-examination by interested

⁷ The analysis was made a part of the record on May 21, 2002, the date on which the Authority conducted its deliberations in this matter. This distinguishes the analysis from a mere staff recommendation which is never made a part of the record by the Authority. The analysis was not provided to any party prior to the Authority's deliberations. See TRA Exhibit 1 to Order of June 21, 2002. See also page 43 of May 21, 2002 transcript.

parties before its conclusions were considered and accepted by a majority of the Directors.

Clearly, in light of the *United Cities Gas* case, the mere reliance on the empirical analysis without opportunity for cross-examination or other impeachment constitutes a serious procedural flow implicating due process and fundamental fairness. Moreover, this procedural error was made more substantial because the "empirical analysis" constituted substantive new information.⁸ Rather than a mere compilation or summary of evidence of record, the analysis purports to employ mathematical and statistical techniques (the accuracy of which are questioned by BellSouth), which the parties had no opportunity to impeach to reach conclusions regarding the ultimate issues in this docket. The analysis clearly includes new and distinct theories and methodologies (not used or proposed by any party), not mere discussion of the evidence presented by the parties, as demonstrated by the section headings of the analysis, including one section of the analysis, which is described as an "Ordinary Lease Squares Regression Analysis, Dependent Variable: Percent Flow-Through". See p. 5 of Exhibit 1 to Order. The unknown author of the analysis should have been subject to cross-examination and impeachment, particularly with respect to the mathematical and statistical assumptions and techniques used in development of the analysis. BellSouth respectfully submits

⁸ It is also noteworthy that at the time Director Greer produced his "empirical analysis" during the May 21 deliberations, the majority had already voted on the motions finding BellSouth's OSS are not regional. Tr. at 43. Director Greer also referred to the analysis repeatedly as "my analysis", "my model", and "the data I calculate". Tr. at 46, 47, 49. This, together with Director Greer's request to "pass it [the analysis] out to the Directors first", makes clear that the analysis was not a staff recommendation or otherwise made available to the three Directors prior to the deliberations. The statement by the majority in the June 21 written Order that the decision of the majority on the regionality of BellSouth's OSS was based in part on the "empirical analysis" is therefore incongruous, to say the least. Order at 40. If, as the written Order states, the majority relied upon the analysis in reaching its conclusions, the analysis was apparently not made available to all three Directors until after the majority had already voted, creating procedural issues under the terms of the State Sunshine Act.

that these assumptions and techniques violate basic principles of statistics. Regardless of the merits of the analysis, however, BellSouth was not afforded due process with respect to the analysis.

C. The Authority's "empirical analysis" of BellSouth's flow-through data is flawed.

In addition, BellSouth's post-decision review shows that the analysis is so fundamentally flawed that no conclusion can be drawn from it. This is true for two basic reasons. First, the use of the mathematical technique of "averaging percentages" by whoever authored the analysis is simply inaccurate as a matter of mathematics. The principal problem with this methodology comes from the use of averaged percentages to obtain monthly estimates for the former South Central Bell states (SCB), the former Southern Bell states (SB) and BellSouth as well as the statewide estimate for a fixed number of months. Furthermore, averaging the "averaged percentages" to obtain percentage estimates for SCB, SB, and BellSouth over the fixed number of months exacerbates the problem.

This fundamental error is illustrated by the example set forth below:

	Entity 1	Entity 2	Total	Arithmetic Average % of Entity 1 and Entity 2
Errors	50	100	150	
Total	500	5000	5500	
% Defective	10%	2%	2.73%	6%

The arithmetical average (6%) of the averages for the two entities clearly fails to take into consideration the relative totals of the two entities. If the

denominators were always the same, then averaging percentages would yield an arithmetically correct percentage. In BellSouth's case, the denominators, made up of total LNP orders, vary, in reality, by as much as multiples of thousands. As a result, the underlying results of the Director's "statistical analysis" cannot support a conclusion of non-regionality.

Secondly, the Director's logic assumes that the type, complexity, and volume of LNP Local Service Requests are identical from state to state. This is a fundamentally incorrect assumption. There are at least 7 variables in the requisition type and activity type of LNP LSRs that are submitted to BellSouth's systems. Given the variations in the CLECs business model and market entry methods that exist from state to state, and the variation in the type of LNP orders placed, the flow-through rates, examined by state, are expected to be different.⁹

In sum, the Authority should reconsider its decision because it was based largely on a flow-through analysis that is neither relevant to the regionality inquiry under the correct legal standard, nor statistically accurate.

D. PwC rendered an Independent Attestation

The Authority also should reconsider its conclusion that BellSouth "had exerted inappropriate influence" on PwC. (Order, at 42). First, in its decision on BellSouth's Section 271 applications for Georgia and Louisiana, the FCC found the same PwC attestation credible and reliable. Specifically, the FCC held as follows:

⁹ During the Authority's deliberations on May 21, 2002, Director Greer emphasized that he chose LNP orders based upon his rationale that LNP orders have very little, if any, product variation. Tr. at 44-45. BellSouth respectfully submits that Director Greer's rationale is overly simplistic, incorrect and at odds with the FCC's roadmap.

We conclude that BellSouth, through the PwC review and other aspects of its application, provides sufficient evidence that its electronic processes are the same in Georgia and Louisiana. In conducting its review, PwC examined the consistency of applications and technical configurations used to process pre-ordering and ordering transactions region-wide, and reviewed the consistency of documentation of systems and processes in BellSouth's local carrier service center. PwC observed transactions, reviewed user guides, performed change control review, and interviewed relevant BellSouth service representatives in making its determination that BellSouth's OSS systems for pre-ordering and ordering are identical. PwC also reviewed the consistency of Local Service Requests (LSRs) for order entry, LSR screening and validating procedures, and various servicing processes to conclude that there is "no material difference in functionality or performance" between DOE and SONGS.

Georgia/Louisiana Order, para. 110. The FCC relied on the attestation, in conjunction with the other evidence in the record, to conclude that BellSouth's OSS in Georgia and Louisiana are the same.

Second, the "facts" upon which the Authority appeared to base its conclusion were taken out of context. For example, the Authority cited the fact that PwC was provided legal representation by counsel for BellSouth as evidence of a lack of independence. *Order*, at fn. 45. As the record made clear, however, counsel for BellSouth only undertook to represent PwC at the hearing after Mr. Lattimore was subject to extensive cross-examination on the meaning of the various protective agreements in the case, questions that arguably required legal expertise to answer. As counsel for BellSouth made clear, the representation arose "after the questions [about the protective agreements] that were asked of Mr. Lattimore yesterday," and counsel for BellSouth "communicated with the general counsel of Pricewaterhouse last evening, and he has asked me to enter a limited

appearance for the purpose of this proceeding to represent Mr. Lattimore." Tr. at IIIA, at 3. Such representation in no way implied that PwC failed to act independently. Moreover, when asked whether BellSouth's representation impacted any of his testimony, Mr. Lattimore unequivocally responded "not in the least bit." Tr. IIIC, at 132.

The Authority also cited Mr. Lattimore's testimony that BellSouth was his biggest client, that he had spent a majority of his time on work related to BellSouth over the last several years, and that BellSouth had paid PwC approximately \$800,000 for the Attestation. Order, at fn. 45. What the Authority did not cite was Mr. Lattimore's testimony that while PwC does work for BellSouth, it also does a great deal of work for AT&T and MCI, two of BellSouth's largest opponents in the proceeding. See Tr. at Vol. IIIA, at 37.

Lastly, the Authority cited Mr. Lattimore's testimony that he provided BellSouth several drafts of the attestation before it was finalized. Order, at fn. 45. As Mr. McElroy testified, however, PwC would "not allow [BellSouth] to draft or modify their opinion." Tr. IIID, at 205. Moreover, Mr. Lattimore confirmed that BellSouth "absolutely [did] not" influence PwC's opinion in any way. Tr. IIID, at 221.

Finally, the Authority failed to consider the fact that PwC, as BellSouth's auditor, reports periodically to the FCC to assure the FCC of its continued independence (Tr. IIID, at 175); that PwC followed the independent auditor standards in conducting its attestation (Tr. IIID, at 175); and that PwC, "as

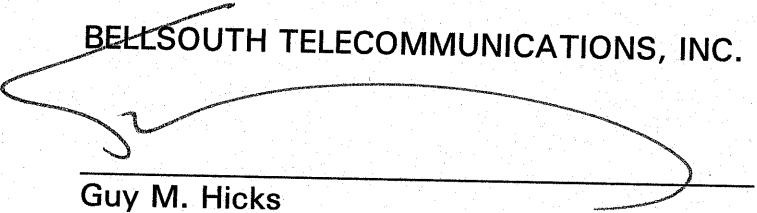
professionals, as members of the AICPA, [are] required to take and be aware of a prudent reasonable person's perspective." Tr. IIIB, at 62. For all of the above-stated reasons, the Authority should reconsider its finding that BellSouth exerted undue influence over PwC.

V. Conclusion

In conclusion, the Authority should reconsider its finding that BellSouth's OSS are not regional. The majority's finding is fundamentally flawed. In fact, it is difficult to fathom. As set forth above, the Authority's decision ignores authoritative precedent, disregards the FCC's roadmap for demonstrating regionality, either lacks an appropriate analysis of the legal standard applied or uses an incorrect legal standard, and misinterprets the evidence. For these reasons, BellSouth respectfully requests that the Authority grant this Motion.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.



Guy M. Hicks
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
(615) 214-6301

Lisa S. Foshee
675 West Peachtree Street, Suite 4300
Atlanta, Georgia 30375

429565



BellSouth Telecommunications, Inc.
333 Commerce Street
Suite 2101
Nashville, TN 37201-3300
guy.hicks@bellsouth.com

REC'D TN
MAR 1 1 PM 1
EXECUTIVE SECRETARY
Guy M. Hicks
General Counsel
615 214 6301
Fax 615 214 7406

March 1, 2002

VIA HAND DELIVERY

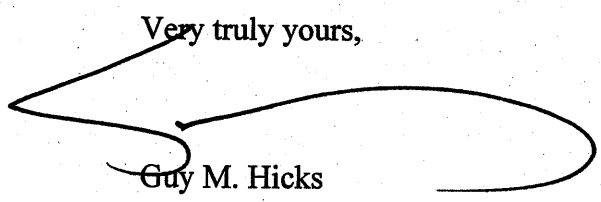
Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s
Operations Support Systems with State and Federal Regulations*
Docket No. 01-00362

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth's Phase I Post-Hearing Brief.
Copies of the enclosed are being provided to counsel of record.

Very truly yours,



Guy M. Hicks

GMH/jej

Enclosure

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In re: *Docket to Determine the Compliance Of BellSouth Telecommunications, Inc.'s
Operations Support Systems with State and Federal Regulations*

Docket No. 01-00362

**BELLSOUTH TELECOMMUNICATIONS, INC.'S PHASE I
POST-HEARING BRIEF**

In its Order in SWBT's Kansas/Oklahoma application, the FCC defined its concept of "regionality." Under the FCC's definition, BellSouth has the same electronic systems and manual processes throughout its nine states that perform pre-ordering, ordering, provisioning, maintenance and repair and billing functions for its CLEC customers. To demonstrate that its OSS are regional, BellSouth's Brief first sets forth the elements of a regionality case and then describes the way in which BellSouth meets all of the FCC's criteria. Next, this Brief explains the inherent flaws and inconsistencies in the CLECs' position in this case. Finally, this Brief explains which of BellSouth's systems and processes KPMG tested in the Georgia Third Party Test.

I. The FCC's Definition of "Regionality"

The FCC defined the concept of "regionality" to allow a regulatory agency to rely on findings from an "anchor" state when reviewing Section 271 applications from other states in the RBOC's region. The FCC held that, "appropriately employed, [regionality] can give us a fuller picture of the BOC's compliance with the section 271 requirements while avoiding, for all parties involved in the section 271 process, the delay and expense associated with redundant and unnecessary proceedings and submissions." *Id.* at 38.¹ To facilitate subsequent applications, the

¹ This efficiency is a key component of BellSouth's argument that additional third party testing is unnecessary in Tennessee. The Georgia third party test, coupled with all of the other

FCC explicitly defined "the kind of evidentiary showing that will be expected of applicants in the future" who seek to make a regionality showing. *SWBT-Kansas/Oklahoma Order*, ¶ 110 ("[b]y explaining clearly what types of evidence we have found to be persuasive in this instance, we are establishing a roadmap that can be followed by other applicants in the future that seek to rely in part, as SWBT has, on evidence presented in another application").

The FCC explicitly has defined the requirements of a regionality showing. Consequently, BellSouth need only follow this roadmap to prove its OSS are regional. To demonstrate regionality, a BOC must show that it provides wholesale services to competing carriers in its various states through one OSS "using common interfaces, systems, procedures and, to a large extent, common personnel." *Id.* at 107. A BOC may demonstrate either that competing carriers in its various states share the use of a single OSS (meaning "a common set of processes, business rules, interfaces, systems and, in many instances, even personnel"); or that the OSS "reasonably can be expected to behave the same way in all three states." *Id.* at 111. A BOC must make this showing for both the manual, as well as the mechanized aspects of its OSS. *Id.* On the mechanized side, a BOC must show that the key interfaces used by CLECs to submit LSRs to the BOC are the same region-wide (in other words that a CLEC can use one interface to submit orders for any state in the region without state-specific modifications). *Id.* at 114.

For the manual aspects of its OSS, a BOC must show that "the personnel involved in actual provisioning and maintenance/repair of CLEC orders in Kansas and Oklahoma will do their jobs in the same manner as those in Texas." *Id.* at 113. The FCC relied on evidence that certain functions were performed out of region-wide work centers; that state-specific operations

evidence BellSouth has asked to present in Phase II of this docket, will provide ample evidence of BellSouth's compliance with checklist item 2 of Section 271. Thus, the Authority need not conduct a second, and duplicative, test.

use the same systems and same procedures region-wide; personnel receive the same training region-wide; and that there is a common organizational structure region-wide. The FCC concluded that, based on this evidence, "it is reasonable to conclude that the existence of these similarities will result in similar performance." *Id.* at 113.

Based on this explicit roadmap, BellSouth presented virtually uncontested evidence to the Authority that its OSS are the same throughout its region. The strongest evidence that BellSouth met each of the FCC's evidentiary criteria is the fact that the CLECs in this proceeding focused their case on attempting to create new regionality requirements that the FCC never imposed. Most notably, despite AT&T's position to the contrary, the FCC has never required an RBOC to present data demonstrating that its OSS performance is identical or substantially similar in its various states. In fact, as Mr. Bradbury admitted, the FCC did not look at any comparative data in support of its regionality finding in the Kansas/Oklahoma application. Tr. at IVC, 145-146 (Bradbury). Simply, BellSouth has met every actual requirement established by the FCC; thus, the Authority must conclude that BellSouth's OSS systems, processes and procedures are the same region-wide.

II. BellSouth's OSS Are The Same Throughout Its Nine-State Region.

1. *Pre-Ordering and Ordering*

a. Electronic OSS

BellSouth provides CLECs with one set of electronic interfaces for all CLEC resale and UNE service requests throughout BellSouth's nine-state region. Simply put, a CLEC in Tennessee uses the same interfaces for access to the same BellSouth OSS as a CLEC in any other state in BellSouth's region. *Pate Direct*, at 10. There is only one Telecommunications Access Gateway ("TAG"); RoboTAG TM; Electronic Data Interchange ("EDI"); Local Exchange

Navigation System ("LENS"); Trouble Analysis and Facilitation Interface ("TAFI"); Electronic Communications Trouble Administration ("ECTA"); Optional Daily Usage File ("ODUF"); Enhanced Daily Usage File ("EODUF"); and Access Daily Usage File ("ADUF"). *Id.* The CLEC can use the same electronic interface (i.e. the same TAG) to submit LSRs to any state in BellSouth's region; the CLEC need not build a separate interface for each state. *Pate Direct, at 15.* AT&T agrees that LENS, TAG and EDI had "high levels of regionality." Tr. at IV C, 194.² In addition, AT&T agrees that LEO and LESOG, other systems used by CLECs, are "highly regional." Tr. at Vol. IVC, 194.

In addition, BellSouth provides CLECs with a comprehensive set of identical business rules, guides, procedures, information and job aids for CLECs to use throughout its region. This information includes one regional set of user guides for BellSouth's electronic interfaces. For example, the *BellSouth Pre-Order Business Rules and BellSouth Business Rules for Local Ordering*, which serve as the basis for the CLEC's pre-ordering and ordering interactions with BellSouth, are used by the CLEC no matter for which state it is submitting LSRs. *Pate Direct, at 14.* AT&T agrees that BellSouth's processes and its business rules are regional. Tr. at IV C, 194 (Bradbury).

Furthermore, BellSouth provides CLECs with region-wide training on the use of the electronic interfaces. The content of BellSouth's training programs is the same for all CLECs for all interfaces and forms, regardless of the states in which the CLEC serves its end users. *Pate, Direct, at 15.* Moreover, BellSouth has no requirement that a CLEC be re-certified to submit LSRs in additional states after it has been certified to do business in the first state in BellSouth's region. *Pate Direct, at 18.*

² While the most Mr. Bradbury could bring himself to say was "high levels of regionality," he presented no position as to why the systems simply were not "regional."

All transaction queries submitted by CLECs, irrespective of the state for which they are submitted, result in BellSouth's returning the same end user information. As Mr. Pate explained, for example, "the CLEC follows the same process in BellSouth's pre-ordering interface that it would when retrieving a CSR for an end user in any other state." *Pate Direct, at 16*. The result of the request for a CSR is presented in an identical format, regardless of the state in which the end user is located. When submitting LSRs, CLECs use a single set of USOCs across its nine-state region. *Pate Direct, at 18*. For example, "1FR" indicates a flat rate residential line in all nine states and "UNETW" indicates an Unbundled Network Terminating Wire in all nine states.³ *Id.*

The underlying legacy systems to which BellSouth provides CLECs access also are regional. BellSouth provides CLECs with access to the same pre-ordering, ordering and provisioning OSS accessed by BellSouth's retail marketing and sales support systems, RNS and ROS. For example, while Mr. Bradbury calls SOC's "moderately regional" in his prefiled testimony, he could not remember any reason why SOC's wasn't "highly regional" when asked about it on the stand. Tr. at IV D, 229 (Bradbury). CLECs and BellSouth retail units across all nine states use the same OSS such as regional street and address database, customer service record database, local facility assignment systems and service order communications system. *Pate Direct, 21*.

As part of pre-ordering, BellSouth provides region-wide access to loop makeup information ("LMU"). The source data for all loop makeup information is contained in the Loop

³ Certain state-specific USOCs or Field Identifiers may arise as a result of regulatory differences between the states. As the FCC found in its *Kansas/Oklahoma Order*, state-specific information does not mean that the OSS is not the same. SWBT, like BellSouth, demonstrated that "state-specific inputs, such as different product codes, [do not] require carriers to modify their interfaces or even their procedure for submitting orders." *SWBT Kansas/Oklahoma Order*, ¶. 114.

Facilities Assignment and Control System ("LFACS") and LFACS is available region-wide. While 100% of BellSouth's loops are populated in LFACS with certain basic information, not all will have the detailed loop makeup information necessary to qualify a loop. Whenever a necessary component is missing from the loop makeup information residing in LFACS, BellSouth personnel use a combination of Engineering Work Orders, field visits, and the plats that contain records of BellSouth's Outside Plant Facilities to complete the loop makeup data that is stored in LFACS. Therefore, the process to obtain the data in LFACS is the same region-wide, while the method of storing foundational network data (e.g. cables, conduits, pole lines, etc.) within BellSouth differs somewhat within the region, in some states being stored on paper plats and in some states on digital plats. *Pate Rebuttal*, at 7. Because the underlying process is the same, the storage method does not affect regionality.

b. Manual OSS

BellSouth's manual pre-ordering and ordering processes are also the same throughout its nine state region. As discussed above, to prove regionality of manual pre-ordering and ordering processes, an RBOC must demonstrate "a common set of processes, business rules, interfaces, systems and, in many instances, personnel." *Kansas/Oklahoma Order*, ¶ 111.

BellSouth's Local Carrier Service Center ("LCSC") handles the pre-ordering and ordering portion of an LSR for resale, UNE and complex services. The Data Customer Support Center ("DCSC") handles ordering functions for most wideband services.⁴ Each of these centers utilizes the same methods and procedures, accesses the same databases and receives the same training in support of CLECs across all nine states of BellSouth's region. *Ainsworth Direct*, at 5-6. AT&T

⁴ The DCSC also handles provisioning and maintenance functions (discussed later) for most wideband services.

agrees that BellSouth's manual service representatives receive the same training region-wide. Tr. at Vol. IVD, 224.

BellSouth's LCSCs are geographically located in Atlanta; Birmingham; and Jacksonville. The Atlanta and Birmingham Centers are assigned to handle the pre-ordering and ordering functions for CLECs across all nine states. CLECs are assigned to either the Atlanta or Birmingham LCSC in order to evenly distribute the total CLEC workload between these two centers. In other words, Tennessee CLECs are assigned to both the Atlanta and Birmingham LCSCs – assignment is not done on a state basis. *Ainsworth Direct*, at 7. The Jacksonville LCSC was added in the first quarter of 2001 in order to more efficiently meet CLEC order volume. The new Jacksonville Center operates primarily as a customer support center for CLECs across all nine states for calls dealing primarily with pre-ordering and ordering issues.

Each of the three LCSC locations operates on a nine-state basis. Moreover, all three LCSCs utilized the same systems, methods and procedures for conducting CLEC pre-ordering and ordering functions. *See* Tr. at IV C, 188 (Bradbury). Specifically, the LCSC locations use the same systems to process LSRs, employs the same type of personnel, and follows the same processes. Simply, the LCSC that provides manual processes for a CLEC seeking to provide service to customers in Tennessee is the very same LCSC that provides processing for a CLEC seeking to provide service to customers in any of the nine states. Because the three LCSC locations are the same, BellSouth has the ability to move the workload between the three LCSCs as an immediate response to high volumes. *Ainsworth Direct*, at 9.

Once in the LCSC, LSRs are handled by product, not by state. *Ainsworth Direct*, at 10. Mechanized LSRs that require manual handling are received by the LCSC via the single LEO system regardless of the state for which the LSR is submitted. Once processed by LEO, the

LSRs are distributed to service representatives at the LCSC assigned to the submitting CLEC, and specifically to the work group within that LCSC that handles LSRs for that particular product type. A load manager assigned to that product type then monitors LSR activity via load reports to ensure LSRs are processed on the first-in/first-out basis and in accordance with evolving performance standards. The service representative then enters the request into BellSouth's legacy systems. The "sameness" of the LCSC's regional operations ensures that CLECs providing local exchange service in Tennessee will receive the same nondiscriminatory access to OSS provided by the LCSC to CLECs operating in any of the states within the nine-state BellSouth region. *Ainsworth Direct, at 10.*

The DCSC serves as an operating unit that provides support to CLECs working with the Complex Resale Support Group ("CRSG"). They offer support in the issuing of orders for broadband services including Asynchronous Transfer Mode ("ATM"), Native Mode LAN Interconnection ("NMLI"), Fiber Distributed Data Interface ("FDDI"), and Video. This center is located in Atlanta and serves CLECs in all nine states, utilizing the same methods, procedures, and processes. Thus, a CLEC submitting inquiries for an end user in Tennessee will receive identical services for an inquiry submitted for an end user in all of the nine states within the BellSouth region. *Ainsworth Direct, at 12.*

The Complex Resale Support Group ("CRSG"), located in Birmingham, is responsible for processing manual service order inquiries for Complex Resale and Complex UNEs, including Asymmetrical Digital Subscriber Line ("ADSL") and High Bit Rate Digital Subscriber Line ("HDSL") and unbundled loops. The CRSG is staffed with 38 employees as of August 31, 2001. This single center serves all CLECs across the nine-state area utilizing the same methods, procedures and processes in providing this support.

CLEC accounts are handled on a region-wide basis by centralized account teams. Each CLEC is assigned an Interconnection Services Account Team, located in Atlanta and Birmingham. The Account Team provides day-to-day CLEC support and serves as the interface for the pre-ordering and ordering activities associated with complex services. The Account Teams also assist CLECs with their interaction with the service centers mentioned earlier. The Account Teams are assigned by CLEC and not by state. *Ainsworth Direct, at 16.*

The processes used by BellSouth to hire employees for the CLEC support centers is the same for all center locations and mirrors that used by BellSouth to select personnel for the retail operations units in BellSouth. The training BellSouth provides to those personnel who perform manual pre-ordering and ordering functions is the same for all of the nine states. *Ainsworth Rebuttal, at 3.* AT&T admits this training is the same. Tr. at Vol. IVD, 224. The employee Effectiveness Organization is responsible for course development and training for employees of the service centers.

In the entire manual pre-ordering and ordering process there is only one different system used in Tennessee than is used in Georgia. Specifically, BellSouth uses two manual service order generation systems in its region. The Direct Order Entry ("DOE") system is used for orders in Florida, Georgia, North Carolina, and South Carolina. The Service Order Negotiation System ("SONGS") is used for orders in Alabama, Kentucky, Louisiana, Mississippi, and Tennessee. The SONGS application used to process CLEC orders in Tennessee is the same SONGS application used in Alabama, Kentucky, Louisiana, and Mississippi. SONGS is used to process 4,000 to 5,000 orders per month in Tennessee and approximately 20,000 orders per month in these five states.

DOE and SONGS are input software programs that are used to provide SOCS with data necessary to generate service order requests. There are no material differences in functionality between DOE and SONGS. Both systems use similar processes for creating a service order. This is because SOCS requires the same LSR screening and validating procedure. Once the LSR information is input into DOE or SONGS it generates the same order in SOCS used to provide service to CLECs across all nine states in the BellSouth region. *Ainsworth Rebuttal*, at 4-5. As described more fully below, the validity of BellSouth's assertion that there are no material differences between DOE and SONGS was attested to by PriceWaterhouseCoopers ("PwC") in an independent third party attestation.

c. PriceWaterhouseCooper's Regionality Assessment

In support of its assertion that its pre-ordering and ordering OSS are the same, BellSouth engaged PwC to examine its assertions on regionality. An "attest engagement" occurs when a practitioner, such as PwC, is engaged to issue a written communication that concludes whether or not the written assertion of another party, such as BellSouth, is reliable. PwC conducted its examination in accordance with "attestation standards" established by the American Institute of Certified Public Accountants.⁵ Under the AICPA attestation standards, an examination is the highest level of assurance that can be provided on an assertion and, if positive, results in an opinion by the practitioner, PwC, that the assertions presented are fairly stated in all material respects. McElroy Revised Redacted Direct, at 30.

PwC's attestation is modeled after the SWBT's Five-State Regional OSS Attestation Examination. Because the FCC viewed this model favorably, BellSouth used it as a roadmap to

⁵ In an attempt to discredit the report, counsel for AT&T asked Mr. Lattimore about other work PwC does for BellSouth. Notably, Mr. Lattimore pointed out the obvious flaw in this argument when he testified that PwC also does a great deal of work for AT&T and MCI. Tr. at Vol. IIIA, 37.

establish the same facts. The only difference between the attestation examinations of SWBT and BellSouth is that BellSouth added a second assertion for two of its manual order input systems used by its Local Carrier Service Center. PwC validated the following "Management Assertions":

First, BellSouth uses the same pre-order and order OSS throughout its nine-state region to support wholesale CLEC activity.

As it relates to the first assertion, "sameness" is defined as the following:

The applications and interfaces implemented and available are identical across the nine-state region. "Identical" is defined as one unique set of software coding and configuration ("version") installed on either one or multiple computer servers ("instances") that support all nine-states in an equitable manner.

The processes, personnel and work center facilities are consistently available and employed across the nine-state region and there are no significant aspects to the processes, personnel or work center facilities that would provide one state a greater service level or benefit than the other states in the nine-state region.

Second, BellSouth's DOE (Direct Order Entry) and SONGS (Service Order Negotiation) systems have no material differences in the functionality or performance for service order entry by the LCSC, based on the criteria established in the Report of Management Assertions and Assertion Criteria on BellSouth Telecommunication's Operational Support Systems. PwC examined functionality and performance. The Functionality assertion was based on the following criteria:

- The same LSRs, created from a single set of business rules are used for order entry.
- The Service Order Communications System ("SOCS") requires the same LSR screening and validating procedure.
- Similar processes are used for creating a Service Order.
- SOCS requires checking for and clearing order entry or initiation errors.
- Both systems output must adhere to the service order edits housed in SOCS.

In addition, PwC conducted a second phase of its analysis during which it examined further the assertion of BellSouth that there was no material difference in performance of order entry between DOE and SONGS based on the following criteria:

- Orders that are input through both DOE and SONGS are created in SOCS on a real-time basis upon submission.
- Similar orders from throughout the nine-state region can be input within reasonably similar timeframes, regardless of whether DOE or SONGS is used.
- Service Representatives are cross-trained on both DOE and SONGS and utilize both systems on a regular basis dependent upon the relative volume and type of transactions by state.

After thorough investigation, PwC concluded that its examination provided a reasonable basis for its opinion, in which it determined that the BellSouth management assertions were fairly stated, in all material respects, as of May 3, 2001, based on the criteria set forth in the Affidavit of Robert L. Lattimore of May 21, 2001, and the *Report of Management Assertions and Assertion Criteria on BellSouth Telecommunication's Operational Support Systems* (Exhibit

MM-14). The PwC Report provides data and validated factual assertions that this Authority can rely upon to establish the regionality of BellSouth's OSS.

With respect to DOE and SONGS in particular, PwC validated the assertion that there are no material differences between the way data is input in DOE and SONGS. In a second phase of its work, PwC completed a performance comparability examination for DOE and SONGS with the following testing approach:

- Observed transactions input into DOE and SONGS and ensured that the process was not materially different. Transactions included each service type (i.e., Resale, Complex, and UNE) and were for each state.
- Observed DOE and SONGS data validation controls and ensured that they were not materially different (i.e., required fields). LSRs are created from a single set of business rules for the purposed for submitting transactions. LSRs are submitted to SOCS in the same format and subject to the same SOCS validations.
- Ensured that there are no material differences between DOE and SONGS based on the end-user state. This was completed via observation of LSRs from all states within the BellSouth region and ensuring the process for submission is consistent.
- Ensured that there are no material differences between DOE and SONGS launch, logon and navigational commands via observation of service representatives completing daily work.
- Observed the process for submitting orders to SOCS and ensured that consistent processes are followed for DOE and SONGS for each state in BellSouth's region.

Of particular interest, PwC measured (via a stopwatch) the amount of time it took LCSC service representatives to successfully submit orders into SOCS via DOE and SONGS. PwC

found that based on a statistically valid sample, the average input time for DOE was 8 minutes and 22 seconds, while the SONGS input time was 5 minutes and 26 seconds. The less-than-3-minute difference between the two input times is not material. PwC depicted the relationship and the relative materiality of the time incurred inputting an order into DOE and SONGS compared to the FOC timeliness for the partially mechanized orders standard of 18 hours and for the manual orders standard of 36 hours. This depiction can be seen on pages 5 and 6 of the PwC report of July 20, 2001 (Exhibit MM-15). The pie charts demonstrate that the average time to process an order through either system is less than 1% of the overall process for the FOC interval for either partially mechanized or manually submitted orders. This difference is not material.

Additionally, PwC defined its scope, methodology and procedures used for the accuracy assessment for the transaction input in DOE and SONGS. This assessment can also be seen in the July 20, 2001 report (Exhibit MM-15): To determine the accuracy of orders input into DOE and SONGS, PwC reviewed the history log files maintained in SOCS. PwC documented the orders that experienced downstream system edit errors, which had to be subsequently corrected by a BellSouth service representative. PwC determined that 19.7% of the orders submitted through DOE and 20.0% of the orders submitted through SONGS experienced downstream system edit errors. Again, PwC was able to validate that BellSouth's assertion that there is no material difference in performance for service order entry by the LCSCs through the DOE and SONGS systems is accurate and correct.

In conjunction with the PwC Attestation, the CLECs alleged that BellSouth's systems are not regional because of so-called "preferential treatment" given to LSRs from Georgia and Florida for a period of time to which PwC refers in one of its workpapers.⁶

PwC raised this issue during its April 2001 investigation into whether BellSouth's OSS used to provide pre-ordering and ordering functions to CLECs are regional in nature. During its examination, PwC conducted numerous interviews with personnel in the Local Carrier Service Centers located in Atlanta, Birmingham and Jacksonville. As a result of these interviews, PwC prepared notes of the substance of the interviews as a part of its backup material.

In the summer of 2000, the Georgia Public Service Commission adopted a set of performance standards in its OSS Docket No. 8354-U. Also during this time, the Georgia Commission was in the process of hearing and deciding the performance metrics and standards that would be applied on a permanent basis in Docket No. 7892-U. Earlier in 2000, the Florida Public Service Commission had adopted performance standards to be applied to all CLEC performance in connection with the Florida Third-party Test. These orders included tighter targets for the timeliness of many items, such as FOCs and Rejects that are worked by the LCSC personnel. McElroy Revised Redacted Direct, at 39.

As a result, BellSouth took steps to increase the workforce in the LCSCs in order to be able to satisfy these tighter standards. Throughout the late summer and into the fall of 2000, BellSouth was training and deploying new service representatives into the LCSCs. In addition,

⁶ In conjunction with this argument, the CLECs tried to argue that BellSouth somehow gave KPMG orders for preferential treatment during the third party tests in Georgia and Florida. As Mr. McElroy testified, the Georgia, Louisiana and Florida Public Service Commissions all rejected this argument. Moreover, had such activity occurred, which it did not, it would not be relevant to the question of regionality because a CLEC's orders are all handled in the same way, irrespective of the state for which they are submitted.

and in order to meet the benchmarks for all CLECs in Georgia and Florida, for a short period of time, priority was given to manually submitted requests from these two states. *Id.*

Priority was given only to requests submitted manually, using fax machines. Mechanized requests are handled through the electronic systems and are handled on a first come, first served basis for the region. For partially mechanized requests, which are those that fall out for handling, these requests are also processed using electronic systems. This treatment for manual requests from Florida and Georgia was started in August 2000 and was to have ended in December 2000. This priority applied to all manually submitted (faxed) CLEC requests in these two states. McElroy Revised Redacted Direct, at 39-40.

In the course of the PwC examination during April, they interviewed personnel at the Birmingham LCSC who had not yet ceased the priority treatment for Georgia and Florida manual requests. This was noted in the minutes of the interview, discussed during this proceeding. BellSouth took action to correct this process in the Birmingham LCSC. PwC validated the correction and closed the issue. This issue itself is not contained in the PwC Regionality Reports. The reason is quite simple; this preferential treatment issue was found and resolved with no impact on the scope or reporting of their Attestation on the Regionality of BellSouth's systems. *Id.*

BellSouth publishes measures results on its interconnection website (<http://www.interconnection.bellsouth.com/mss/index.html>) for all nine states utilizing the Georgia measurements and standards. The results for Tennessee along with the other states served by BellSouth can be found on this website. Priority treatment for manual requests in the LCSC for Georgia and Florida would primarily impact two measurements, Reject Timeliness and FOC Timeliness for manually submitted LSRs. The results for these two measures for all

nine states can be seen in Exhibit MM-16. For the period July 2000 through July 2001, the results show a consistent improvement in all nine states beginning in October of 2000. For the four disaggregation categories with very significant volumes, resale residence and business non-mechanized requests, UNE analog loops non-mechanized requests, and UNE-P combinations non-mechanized requests, the data shows that, beginning in the January-March 2001 time period, BellSouth's performance has been consistent across all nine states, with all states exceeding the relevant benchmark on both measures for nearly every month. In short, the actual performance in all of BellSouth's states through July 2001 clearly demonstrates that the priority given to Georgia and Florida manual requests was very short-lived and caused very little disparity in the actual performance between or among states. Thus, this issue has no impact on the question of the regionality of BellSouth's OSS. McElroy Revised Redacted Direct, at 41.

PwC has now completed two independent assessments on the two BellSouth assertions on regionality. These assessments have concluded that BellSouth's systems are regional and that there are no material differences between DOE and SONGS.

d. Preordering and Ordering Conclusion

In conclusion, BellSouth has the same pre-ordering and ordering OSS throughout its region. PwC, an independent third party auditor, verified BellSouth's assertions as to the regionality of its pre-ordering and ordering OSS. BellSouth has met each of the FCC's requirements for a regionality showing; AT&T itself admitted that BellSouth had produced, at least "in terms of form" the same evidence produced by SWBT in its Kansas/Oklahoma application. Moreover, as this section of the Brief demonstrated AT&T does not ever dispute the vast majority of that evidence. Thus, the Authority should find BellSouth's pre-ordering and ordering OSS to be regional.

2. Provisioning and Maintenance and Repair

BellSouth provides CLECs with provisioning and maintenance and repair functions on a regional basis. With respect to electronic systems for CLECs, BellSouth offers to CLECs a single TAFI system that combines the complete functionality of the separate business and residence versions of TAFI used by BellSouth's repair attendants. TAFI is available on a region-wide basis. BellSouth also provides CLECs the machine-to-machine Electronic Communications Trouble Administration ("ECTA") Gateway, which provides access to BellSouth's maintenance OSS supporting both the telephone-number and circuit-identified services (i.e. designed and non-designed services). As with TAFI, ECTA operates on a region-wide basis and can be used by a CLEC to submit maintenance and repair requests for all nine states. *Pate, 5-6d.* AT&T admitted that TAFI and ECTA are "highly regional." Tr. at Vol. IV D, 194.

BellSouth's provisioning and maintenance and repair centers are the same throughout the nine states. BellSouth's CWINS Center is housed in three facilities located in Atlanta, Jacksonville and Birmingham. The CWINS Center is responsible for the provisioning of all coordinated resale/UNE services and maintenance of UNEs and resale services. The Jacksonville Center was added in the first quarter of 2001 in order to more efficiently meet CLEC order volumes. These three centers are assigned to handle the provisioning and maintenance functions for CLECs across all nine states. CLECs are primarily assigned to each CWINS Center in order to evenly distribute the total CLEC workload between the three centers. Today all resale provisioning and maintenance support for CLECs across all nine states is handled in the Atlanta CWINS Center. Again, CLEC orders are divided between the centers by CLEC account, not by state. These centers all utilize the same methods and procedures for

processing CLEC provisioning and maintenance functions. Thus, if a CLEC submitting LSRs for the provision of UNEs to end users located in Tennessee also submits LSRs for end users located in all of the nine states within the BellSouth region, the same BellSouth personnel, at the same center location, would provide the provisioning assistance needed for those orders.

BellSouth's network operations group, which is responsible for performing the actual provisioning, maintenance and repair of customer services within the nine BellSouth states, also is the same. As discussed at the first of this Brief, an RBOC can demonstrate that its Network Operations is the same by showing that certain functions are performed out of region-wide centers; that state-specific operations use the same systems and follow the same procedures region-wide; personnel receive the same training region-wide; and that there is a common organizational structure region-wide. *Kansas/Oklahoma Order* ¶ 113.

BellSouth's network operations throughout the states share a common organizational structure. Network Services is a single team of employees that reports to one corporate officer, the President of BellSouth Network Services, who in turn reports to the CEO of BellSouth. The network employees that handle provisioning, maintenance and repair of CLEC and BellSouth orders and/or troubles report to the same officer, namely the Executive Vice President – Network Operations. These groups are arranged along geographical lines, based on span of control and service level demands. These network employees also are organized into common work functions such as central office operations, engineering and construction, and installation and maintenance. For example, there are seven regionally-based Vice Presidents overseeing the Installation and Maintenance, Central Office Operation, and Engineering and Construction for BellSouth's nine states. Within these work functions, employees specialize in particular sub-processes in order to provide the most effective use of BellSouth resources. Specifically, there

are groups that handle Plain Old Telephone Service ("POTS") services and other groups that handle Special Services offerings. *Heartley Direct, at 2-4*

The Network Vice President (NVP) responsible for the state and the NVP's team are responsible for implementing the methods and procedures developed by the regional staff and utilizing the regional systems and regional processes described below. The NVP has discretion to move personnel to respond to the demand of customers in his area. These personnel use the same systems, same methods and procedures and same interfaces with the same centers. The regional staff works with the field forces and responds to new technologies and services demanded by our customers. *Heartley Direct, at 5.*

The Central Office Operations Group includes installation, maintenance and repair of BellSouth switching and transport facilities and networks, as well as installation, maintenance and repair of customer services supported by switching and transport equipment and networks. Two centers are involved in the processing of work in this group – the Network Reliability Group and the Work Management Center. There is one region-wide Network Reliability Group for all nine states. The functions performed in the WMC are identical to those used in the WMC assigned to other states in the region. To take advantage of expertise developed at the local working level while maintaining consistency throughout the nine states, managers meet periodically with the Staff to discuss issues related to the central office organization and agree on common methods and procedures. *Heartley Direct, at 5-6.*

The Engineering and Construction group includes planning, development and construction of the BellSouth infrastructure and distribution network. The functions of this group are performed by centers identical to those utilized for performing such functions throughout the region. As with the other network groups, to ensure consistency throughout the

nine states, managers meet periodically to discuss issues related to engineering and construction. *Heartley*, at 6-7.

Finally, the Installation and Maintenance Group ("I&M") includes the installation, repair and maintenance of customer and company services. The I&M centralized control functions are performed by a group of centers identical to those utilized for performing centralized control functions throughout the region. These centers include the WMC, discussed above, and the Address/Facility Inventory Group ("AFIG"). The AFIG and the WMC centers are managed within a single Director level organization similar to corresponding centers in other states and also operate with systems, methods and procedures identical to the AFIG and WMC centers in other states. *Heartley Direct*, at 7-8.

The provisioning flow and maintenance and repair flow for each of the states is the same. The processes for each function are the same across all nine states, utilize the same systems across all nine states, and are also the same regardless of the type of customer – wholesale, access, or retail.

The policies and methods and procedures for the network organization are developed and applied on a region-wide basis. BellSouth has a vice president responsible for developing the policies, methods and procedures used by the Network department throughout BellSouth's nine states. *Heartley Direct*, at 8. BellSouth has a region-wide distribution plan for its methods and procedures that ensures all appropriate work groups have the latest documentation. *Heartley Direct*, at 11. Specifically, BellSouth has implemented two primary web-based distribution systems for methods and procedures. The BellSouth Electronic Library Service ("BELS") and the Corporate Document and Interface Access ("CDIA") systems offer web access to the documents relating to Network methods and procedures, as well as vendor related documents.

All employees have access to the web site to view or print any documents that they need to perform their functions in accordance with the approved methods and procedures. These documents are prepared on a region-wide basis and are equally available to all employees regardless of the state in which they work. *Heartley Direct*, at 11-12.

BellSouth uses the same training for network personnel throughout its nine state region. Subgroups of Network Services ensure that proper training is developed based on the standard methods and procedures and delivered to the network department in the same format and content across all nine BellSouth states. Approximately 85% of BellSouth's technical training is provided at 5 locations throughout the region; the remaining 15% is "suitcased" to various locations in the nine states. Network personnel throughout the nine states attend training at any or all of these locations depending on the subject matter of the course and the class size. Training is divided by subject matter, not by state. Because the training for a particular subject matter is identical, it is irrelevant which location is selected. *Heartley Direct*, at 9-10.

BellSouth also uses the same methods for procurement of its tools and test sets throughout the region. Procurement of tools and test sets is controlled by a centralized group in Supply Chain Services. A Network Advisory Board consisting of Supply Chain Services and Network Services personnel are charged with evaluating all tools and test sets. Supply Chain Services maintains a list of approved items and controls the introduction of new items to ensure, among other things, an effective common set of methods and procedures is used in the nine states. This ensures consistency in work efforts and allows technicians to execute their work functions anywhere in BellSouth's territory. *Heartley Direct*, at 10.

Finally, the systems BellSouth uses for provisioning and maintenance and repair are the same throughout its nine state region. Specifically, BellSouth uses: WFA/C; WFA/DO;

WFA/DI; NSDB; FOMS/FUSA; TIRKS; FACS; COSMOS; SWITCH; LFACS; SOAC; RSAG; and ATLAS. BellSouth uses a single version of each software application run on these systems, each of which handles CLEC and BellSouth orders on a non-discriminatory basis throughout the nine states. *Heartley Direct, at 12-14.*

The best practical evidence of the regionality of BellSouth's network operations is the fact that in cases of emergency or unusual workload, managers and technicians can be moved either physically (line operations forces) or virtually (centralized control functions) between geographical areas. Sometimes this movement is within a city, or state, or across states. The use of the same systems, methods, and processes throughout the nine states promotes this flexibility. *Heartley Direct, at 10.*

Despite the use of common systems, methods and procedures, this does not mean that performance will be, or reasonably could be expected to be, identical. As Mr. Heartley explained, actual performance is affected by many variables beyond BellSouth's control. For example, local and state government requirements and regulations often affect how and when services may be provisioned or repaired. Local permitting requirements also vary between states. Such local restrictions have a direct bearing on the time required to provision or repair service, affecting missed installation appointments as well as average installation interval and delay day appointments. Similarly, local weather conditions have a direct impact on trouble report rates and the ability to complete outside construction activities. Differences between states in economic growth, network topology, and customer preferences also can impact performance. For all these reasons, the FCC did not look at comparative performance data to determine sameness of network operations; rather, the FCC looked to whether the RBOC has

common systems, methods, processes and procedures. See *SWBT Kansas/Oklahoma Order*, ¶ 113.

3. *Billing*

BellSouth's billing systems are region-wide and are essentially the same systems BellSouth's uses to bill its retail and IXC customers.⁷ BellSouth uses three systems to provide CLECs with bills for services ordered from BellSouth. These systems are CRIS, CABS and the BellSouth Industrial Billing System (BIBS). CRIS is used to provide billing for resale service requests, resale usage events, UNE service requests and UNE billing transactions for unbundled switch ports and unbundled Service Level 1 loops. Billing for all other UNEs and interconnection services are channeled through CABS. BIBS processes the usage events associated with unbundled switch ports. *Scollard Direct*, at 2-3.

The processes and equipment used for billing in Tennessee are the same as the processes and equipment used in Georgia and the remaining states in BellSouth's region. In CRIS, CABS and BIBS, the same physical software that processes transactions and creates invoices in Georgia performs these same functions in Tennessee and all other states in BellSouth's region. The same group of personnel provides quality control functions for all nine states, and BellSouth has a central group that develops region-wide methods and procedures required to perform the steps necessary to accurately produce CLEC bills. Moreover, the maintenance of the various reference tables (such as product rates, etc.) used by the billing system is handled for all states by one group. In short, the systems, processes and procedures are the same for all states and are created, maintained and executed by the same group of employees regardless of the state being processed. *Scollard Direct*, at 12-14.

⁷ BellSouth provides the BIBS system to bill for switch port usage for which there is no retail equivalent. *Scollard Direct*, at 4-5.

As with the pre-ordering and ordering OSS, to effectively manage the massive amounts of data processing required to keep the daily billing cycles running, customer accounts are segregated into separate sets of databases depending on the state in which the account resides. Because of this, multiple occurrences of CRIS, BIBS and CABS run in parallel at the same time utilizing all of these databases. All of the software versions of CRIS, CABS, and BIBS, however, are identical to each other and are run on the same type of hardware for all states. These separate processing streams are running in two data centers located in Birmingham, Alabama and Charlotte, North Carolina. Regardless of which data stream is running, the software, controls, procedures and processing steps required to create invoices for both CLEC and retail customers are the same. *Scollard Direct*, at 14. As discussed previously, the FCC has found such evidence, in this case uncontroverted, conclusive proof that an RBOC's OSS are the same. *See SWBT Kansas/Oklahoma Order*, p. 111.

C. The CLECs' Case Lacks Merit.

The cornerstone of the CLECs' case is fatally flawed. The CLECs argue that to prove its OSS are the same, BellSouth must present identical or substantially similar performance data from every state in its region. Tr. at Vol. IIA, 59 (Hopkins). The CLECs have fabricated this requirement out of whole cloth. As Mr. Bradbury admitted, no RBOC has ever presented identical or substantially similar performance data to prove a regionality case to the FCC. *See* Tr. at IVC, 145-146 (Bradbury). Specifically, nowhere in the *Kansas/Oklahoma Order*, which the FCC itself heralded as its regionality roadmap, did the FCC ever suggest that SWBT needed to present performance data comparing Texas to Oklahoma and/or Kansas.

Moreover, AT&T's position is internally inconsistent. AT&T argues that regionality only is relevant in the absence of state-specific performance data. At the same time, however, AT&T

argues that the only way BellSouth can prove regionality is by comparing state-specific performance data between the states. *See* Tr. at IVC, 134 (Bradbury). In other words, BellSouth must have state-specific data to prove regionality; if, however, such data exists, regionality, in AT&T's view, is irrelevant. This inconsistency is a creation of AT&T – not of the FCC – and it should be rejected out of hand.

In an attempt to reconcile AT&T's inherently inconsistent position, Mr. Bradbury argued that what the FCC should have done in its evaluation of the Kansas/Oklahoma application was compare data from Texas with data from other states in SWBT's region like Arkansas or Missouri to see if SWBT's performance was identical. Tr. at IVC, 159-160 (Bradbury). He admitted, however, that the FCC had not made such a comparison, and that such a comparison was not an FCC requirement for regionality. *Id.* Thus, his position simply is an AT&T fabrication, not an actual FCC requirement.

Based on its flawed evidentiary theory of comparative performance, AT&T argued that BellSouth's manual systems are not regional because there may be differences in performance between different LCSC locations. To the contrary, BellSouth demonstrated its centers are regional. Workload is divided between center locations by CLEC, not by state. Thus, differences in performance between the centers have no impact on Tennessee as a whole. As Mr. Lattimore explained, "each representative is not dedicated to a state...each representative is trained to process orders, and it could be for any of the nine states...so whether they're a bad rep or a good rep, they're going to process the orders badly or well for all nine states." Tr. at Vol. IIIB, 96 (Lattimore).

The CLECs also argue that BellSouth's electronic interfaces are not the same because they operate off different servers and the performance between the servers could be different.

The location or number of the servers does not impact the regionality of BellSouth's OSS. As Mr. Pate explained, "[t]o the extent that there are separate servers for processing CLEC requests via [BellSouth's] interfaces, the servers use the same programming code and are designed to operate in an indistinguishable manner." *Pate Direct, at 10-11*. In short, the servers use the same type of hardware running identical software which is the evidence the FCC requires to prove regionality.

In its *Kansas/Oklahoma Order*, the FCC explicitly rejected the CLECs' contention that different servers somehow make the interfaces different.⁸ To the contrary, the FCC held that an RBOC can demonstrate "sameness" by showing that two different processing systems "use the same programming code and, moreover, are designed to operate in an indistinguishable manner." *Kansas/Oklahoma Order*, ¶ 111; 113. The FCC found that SWBT's systems were region-wide because "its two SORD processors [located in Dallas and St. Louis] are the same type of hardware running identical software." *Kansas/Oklahoma Order*, p. 115. BellSouth has made an identical showing to the Authority.

Mr. Bradbury tried to distinguish the FCC's explicit holding on this issue by using the same circular argument that is the cornerstone of AT&T's position – he argued that "in the absence of data, the FCC found that the systems were regional." Tr. at IVD, 209. In the next breath, however, he argued that while the FCC did not look at data comparing performance of the different servers in the *Kansas/Oklahoma* application, BellSouth must produce identical or substantially similar performance data in this case to prove the same proposition before the FCC in that application. *Id.* This is nonsensical.

⁸ While the FCC did not explicitly address the regionality of the navigator contracts that connect the different servers, the inference can be made that if multiple servers do not impact regionality, then different navigator contracts would not be an issue either.

Interestingly, Mr. Bradbury's position on the multiple servers, like many of his other positions, is inconsistent. In some cases, Mr. Bradbury claims that multiple servers mean that the systems involved are not regional. In the case of LEO, however, which runs on four different servers, Mr. Bradbury has classified it as "highly regional." Tr. at IVD, 226. His so-called "criteria" for regionality, which he did not provide to the Authority, are self-serving and murky at best.

With respect to the elements of regionality proof the FCC actually does require, Mr. Bradbury admitted that he didn't "know personally" whether the coding in the different servers is the same; and he "assumes" that the people who maintain the servers are trained to use the same procedures in the same way. Tr. at IVD, 201. For the evidence the FCC actually looks to, therefore, BellSouth's evidence is virtually uncontroverted.

AT&T further argues that BellSouth's OSS are not regional because the data in specific databases is "inherently geographic." *Bradbury Direct*, at 10-12. This argument also is nonsensical. As Mr. Pate explained, "common sense demands that the data for each geographic location will match with the end user's data for that geographic location." *Pate Rebuttal*, at 3-4. As Mr. Bradbury admitted, there is no doubt that SWBT customers in Kansas and Oklahoma have different street addresses and telephone numbers than do its customers in Texas. Indeed, the UNE rates at which CLECs purchase services from SWBT differ in Texas, Kansas and Oklahoma. As Mr. Bradbury admitted, none of these differences precluded the FCC from concluding that SWBT's OSS are regional. Tr. at IVD, 226-227.

Nor does the fact that the systems occasionally have outages impact the fact that they are regional. First, outages are no more likely to occur for any one state over another. Tr. at Vol. IIIB, 72 (Lattimore) ("its not like you've got one particular set of technology that is

foolproof...and then one that's not."). Second, precisely because BellSouth's OSS are the same region-wide, BellSouth has the ability to reroute transactions between servers to resolve outages. Tr. at Vol. IIB, at 139.

A large part of the hearing was spent on the issue of state-specific flow-through data. Simply, state-specific flow-through data is not relevant to a determination of regionality. The FCC did not require SWBT to submit comparative flow-through data for Kansas, Oklahoma and Texas, nor would it have been possible for SWBT to do so. As BellSouth expected, the flow-through numbers for the different states are different; these differences, however, have no bearing on the question of whether the systems are regional. As Mr. Pate explained, differences between states in flow-through numbers can be attributed to differences in product mix or volumes submitted. *Tr. at Vol. IA, 132 (Pate)*. Moreover, there are no Tennessee personnel who would, or should, have any knowledge of flow-through as flow-through is managed on a region-wide basis. *Id. at 134*.

With respect to provisioning and maintenance and repair, AT&T had "no evidence to dispute" Mr. Heartley's testimony that the procedures, practices and training for network operations are the same across the region. Tr. at Vol. IVD, 235 (Bradbury). With respect to billing, while Mr. Bradbury claimed BellSouth's manual billing functions are not regional, he did not know that BellSouth's manual billing functions are performed out of one work group for the entire region. Tr. at Vol. IVD, 238 (Bradbury). When confronted with that fact, he attempted to argue that if one work group performed "multiple functions" that could impact regionality, but then admitted that "the fact that there are multiple functions doesn't mean its not regional." Tr. at Vol. IVD, 238.

AT&T also claims that BellSouth's billing systems are not regional because the content of the bill may vary from state to state. *Bradbury Rebuttal*, at 18. BellSouth uses the same systems and processes to process bills in every state in its region. Thus, while bills, by necessity, may contain state-specific information, the process for producing those bills is the same region wide. For example, in one state the pricing for a particular service may include a recurring charge as well as a non-recurring charge when a service order is ordered while in a second state only the recurring charge is used. In this instance, the content of the bill may vary between the two states, but the process by which the rates for that product are placed on the customer's bill (whether or not the non-recurring charge is present) is the same. While the information maintained by the processes may be different, the processes by which the information is loaded and the systems into which the information is loaded, is the same. *Scollard Rebuttal*, at 3-4. It is this evidence of identical processes and procedures upon which the FCC relied to find SWBT's OSS regional.

AT&T also argues that BellSouth's billing systems are not regional because inputs to the billing systems originate from a number of sources throughout the region. *Bradbury Rebuttal*, at 18. To the contrary, these inputs, which result from the underlying source data, are no more likely to occur in Tennessee than in any other state. In fact, because any given transaction may have an error present on it (whether originating from a switch or a service representative) various region-wide edits and controls are in place to highlight that error and have it resolved. These edits and controls are the same for all nine states, and thus all errors, irrespective of where the originated, are treated the same. *Scollard Rebuttal*, at 4-5.

In conclusion, the CLECs' arguments are not sustainable:

- The FCC has no requirement that an RBOC must present identical or substantially similar performance data from different states to prove regionality, and has not considered such data;
- The FCC explicitly rejected the argument that the use of different servers means the systems are not regional;
- The FCC held SWBT's OSS to be regional despite the fact that Kansas, Oklahoma and Texas all have state-specific information in the OSS.

In short, the CLECs have not presented any evidence to support a claim that BellSouth's OSS are different in Georgia and Tennessee. For this reason, the Authority should hold that BellSouth's OSS are regional.

III. The Georgia Third Party Test

A. Introduction

As demonstrated above, BellSouth's OSS are regional. Consequently, the Authority can rely on the results of the Georgia Third Party Test, to the extent it deems necessary, as evidence of BellSouth's compliance with the requirements of the Act. The Georgia TPT is thorough and complete enough, when used in conjunction with actual commercial data, to provide the Authority with all of the evidence it needs to render a decision on BellSouth's performance.⁹

The key point when reviewing the sufficiency of any third party test is to look at the test in conjunction with the other types of evidence that exists. In its Section 271 jurisprudence, the FCC has held that the most probative evidence of compliance with Checklist item 2 is commercial usage, followed by carrier-to-carrier testing and then third party testing. Thus, it is not correct to look at a test in terms of whether it addresses every system, every process, or every aspect of the CLEC experience. Rather, the test must be viewed as one piece (and not the most important piece) of the entire evidentiary puzzle. The question before the Authority is not whether Georgia tested everything being tested in Florida, but rather whether Georgia tested enough to supplement BellSouth's evidence of commercial usage in Tennessee and other states in its region. For example, the Georgia Commission did not test LENS. However, "LENS was and actually still is today [BellSouth's] most heavily used interface by CLECs." *Tr. at Vol. ID, 122 (McElroy)*. Consequently, the Commission had commercial volumes upon which to assess BellSouth's performance on LENS; it did not need third party testing. Similarly, KPMG did not

⁹ The CLECs will no doubt argue that KPMG itself stated that the Georgia test was not intended for use in other states. This argument is a red herring. First, Mr. Weeks testified that KPMG did no analysis whatsoever of the regionality of BellSouth's systems and thus had no opinion either way as to whether the systems in Tennessee are the same as those in Georgia. *Weeks, Tr. at Vol. IA, 28*. Moreover, Mr. Weeks also told the TRA that KPMG "would have the same reservations about" the use of the Florida test. *Weeks, Tr. at Vol. IA, 70*. This testimony highlights the financial interest KPMG has in conducting nine different tests in BellSouth's region. Finally, Mr. Weeks indicated that KPMG included similar limiting language in its New York test report and yet that report was relied upon in other states. *Weeks, Tr. at Vol. IA, 70-71*.

specifically test account management; again, however, the Georgia Commission "felt like having the CLECs and going through that account establishment process, using the help desk on a daily basis, established that there was commercial usage in place at that time [sic] and so they did not order that those items be explicitly tested." *Id.* at 226.

Moreover, it is critical to remember that the FCC has held that there is no cookie-cutter approach to third party test. While certainly the Florida test includes things that were not tested in Georgia, there were things tested in Georgia that were not tested in New York and/or Texas, both of which the FCC has approved. Tr. at Vol. IIA, 29 (McElroy). In fact, each of the third party tests the FCC has approved thus far has been different. Tr. at Vol. IIA, 29-30 (McElroy).

B. Content of The Georgia Test

On May 20, 1999, the Georgia Commission issued its Order of Petition for Third-Party testing in Docket No. 8354-U. Based on substantial involvement in the development and operation of BellSouth's electronic interfaces and OSS, the Georgia Commission concluded that a focused third-party audit would be suitable for Georgia. The Georgia Commission determined that the Georgia third-party audit should focus on the specific areas of OSS that had not yet experienced significant commercial usage, and about which CLECs had expressed concerns regarding operational readiness.

As originally conceived, the Georgia third-party test specifically addressed the following elements of BellSouth's OSS infrastructure: electronic interfaces to the OSS (TAG, EDI, TAFI, ECTA, ODUF, ADUF, CRIS, and CABS¹⁰); UNE analog loops (with and without number portability); UNE switched ports; UNE business and residence port-loop combinations; Local

¹⁰ TAG (Telecommunications Access Gateway); EDI (Electronic Data Interchange); TAFI (Trouble Analysis Facilitation Interface); ECTA (Electronic Communications Trouble Administration); ODUF (Optional Daily Usage File); ADUF (Access Daily Usage File); CRIS (Customer Record Information System); CABS (Carrier Access Billing System).

Number Portability ("LNP"); all five core OSS processes (pre-ordering, ordering, provisioning, maintenance and repair, and billing); and normal and peak volume testing of the electronic interfaces for pre-ordering, ordering, and maintenance and repair using a representative service mix of resale services and UNE transactions. The Georgia Commission also required an audit of BellSouth's Flow-through Service Request Report for the latest three months of data.

On June 15, 1999, two audit firms, KPMG and Hewlett-Packard, were approved by the Georgia Commission. On June 28, 1999, the Georgia Commission issued an order approving the initial third-party Master Test Plan ("MTP"). (Exhibit MM-1). The MTP sets forth all of the systems and processes that KPMG evaluated at part of the initial part of the Third Party Test.

On January 12, 2000, the Georgia Commission issued an order requiring BellSouth to initiate additional testing of its OSS. The Supplemental Test Plan ("STP"), Exhibit MM-2, includes: an assessment of the change management process as it applied to the implementation of Release 6.0 (also known as "OSS99"); an evaluation of the current pre-ordering, ordering, and provisioning of xDSL compatible loops; a functional test of resale pre-ordering, ordering, provisioning, maintenance and repair, and billing transactions for the top 50 electronically orderable retail services available for resale that have not experienced significant commercial usage; and an evaluation of the processes and procedures for the collection and calculation of performance data. Together, the MTP and STP provide a complete description of the processes, systems and procedures used by BellSouth to provide wholesale elements and services to CLECs in Tennessee.

KPMG filed its Final Report with the Georgia Commission on March 20, 2001. In the report, KPMG defines its evaluation criteria as "the norms, benchmarks, standards, guidelines used to evaluate items identified for testing. Evaluation criteria also provided a framework for

identification of the scope of tests, and the types of measures that must be made during testing, and the approach necessary to analyze results." Throughout the test, KPMG analyzed over 1,170 criteria in eight functional areas. KPMG analyzed each criterion, and the results fell into five categories: satisfied, not satisfied, not complete, no result (also known as, "no report"), and not applicable. KPMG determined that 95.5 percent of the criteria were "satisfied," 1.8 percent are "not satisfied," 1.5% are "no report," and 0.3% are "not applicable." Eleven criteria (0.9 percent; all metrics) remain categorized as "not complete" at this time.

KPMG also tested 420 evaluation criteria related to performance measurements. Of those, virtually all are closed and satisfied. At the time of the hearing, there were 11 evaluation criteria for metrics that KPMG has not yet reconciled ("not complete criteria"). Work continues on these criteria, and they should fall into either the "satisfied" or "not satisfied" classifications.

The MTP, the STP and the Final Report document every system and process tested in Georgia. Because BellSouth's systems are regional, the Authority can use the test as corroborating evidence of the extensive commercial usage in Tennessee. This commercial usage will be presented in Phase II of this proceeding and in the companion Section 271 docket.

The Georgia TPT, as with any third party test, did not occur in a vacuum. The tests occur in live production environments, and those environments change. Thus, the tests are, by necessity, snapshots in time. *Tr. at Vol. ID, 217 (McElroy)*. While certain aspects of BellSouth's OSS evolved during the two years that the test spanned, that fact, in and of itself, does not invalidate the test. Any test will likely be outdated between the time it starts and the time it finishes. *Tr. at Vol. ID, 213 (McElroy)*. It is impossible to run a production test in a static environment.

Nevertheless, the Georgia test is comparable in scope to the third-party tests conducted in New York and Texas, both of which received 271 approval. The similarities and differences between the Georgia test and those in New York and Texas can be seen in Exhibit MM-8. The Georgia test included the same functionality review of OSS Business processes as New York and Texas. In addition, all three tests assess OSS scalability. All three tests included normal volume and peak testing of the interfaces. Moreover, the Georgia test reviewed all documentation for maintenance, updates and communication, as did New York and Texas. Like New York and Texas, the Georgia test assessed change management (including the notice and completion intervals), release versioning policy, defect management process, and OSS interface development review. All three tests included functional testing of pre-ordering and ordering. All three tests provisioned orders, evaluated provisioning processes, and tested the performance of specific provisioning measures. Georgia and New York tested basic functionalities of Maintenance and Repair (M&R), and included an M&R process parity evaluation. In some cases, the Georgia test went beyond the tests in New York and Texas. For example, the Georgia test included manual ordering for xDSL loops while the New York test did not. Moreover, the Georgia test included a more extensive performance metrics evaluation than tests from either New York or Texas.

The Georgia test meets all of the criteria established by the FCC in its decision on Bell Atlantic's New York application. Specifically, in the Georgia test, like the New York test, KPMG was an independent tester, conducted a military-style test, made efforts to place itself in the position of an actual market entrant, and made efforts to maintain blindness when possible. In compliance with FCC decisions, the Georgia test is a focused test that appropriately

concentrates on the specific areas of BellSouth's OSS that had not experienced significant commercial usage.

The CLECs argue that the differences between Florida and Georgia, in and of themselves, make the Georgia test invalid. This is not the case. Instead, the differences merely reflect that the scope of the Georgia test differs from the scope of the Florida test. A comparison of the Georgia and Florida tests can be seen in Exhibit MM-11. The Commission has specifically rejected the suggestion by CLECs that third-party tests should follow a "cookie cutter" pattern. KPMG completed and concluded the test in Georgia based upon the scope of that test as ordered by the Georgia Commission. Exhibit MM-11 provides a review of the processes, systems and procedures used by BellSouth to support CLEC wholesale activities across Tennessee, Georgia and Florida. The only system difference is one between the Direct Order Entry ("DOE") and Service Order Negotiation ("SONGS") systems, and that difference was discussed in depth in the Regionality section of this Brief.

III. CONCLUSION

For the reasons set forth herein, BellSouth respectfully requests that the Authority hold that BellSouth's OSS are regional. BellSouth has met each of the FCC's regionality requirements. Rather than challenge BellSouth's evidence, the CLECs tried to create new obligations and then argue that BellSouth does not meet those requirements. Specifically, despite the CLECs' position to the contrary, the FCC has never required an RBOC to present performance data demonstrating that its performance is substantially similar in all of its states.

Thus, the Authority should ignore the CLECs' red herring and focus on the relevant evidence – evidence that shows unequivocally that BellSouth's OSS are regional.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

Guy M. Hicks
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
(615) 214-6301

Fred J. McCallum, Jr.
Lisa S. Foshee
675 W. Peachtree St., NE, Suite 4300
Atlanta, Georgia 30375

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2002, a copy of the foregoing document was served on counsel for known parties, via the method indicated, addressed as follows:

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Michael A. Hopkins
McKenna & Cuneo
1900 "K" St, NW
Washington, DC 20006
mike_hopkins@mckennacuneo.com

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

James Wright, Esq.
United Telephone - Southeast
14111 Capitol Blvd.
Wake Forest, NC 27587
james.b.wright@mail.sprint.com

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

H. LaDon Baltimore, Esquire
Farrar & Bates
211 Seventh Ave. N, # 320
Nashville, TN 37219-1823
don.baltimore@farrar-bates.com

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Henry Walker, Esquire
Boult, Cummings, et al.
P. O. Box 198062
Nashville, TN 37219-8062
hwalker@boultcummings.com

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Jon E. Hastings, Esquire
Boult, Cummings, et al.
P. O. Box 198062
Nashville, TN 37219-8062
jhastings@boultcummings.com

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Timothy Phillips, Esquire
Office of Tennessee Attorney General
P. O. Box 20207
Nashville, Tennessee 37202
timothy.phillips@state.tn.us.com

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

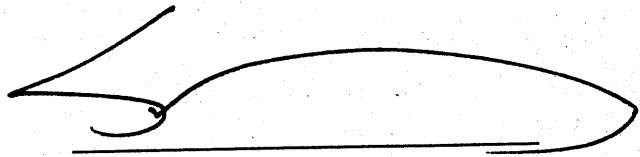
Charles B. Welch, Esquire
Farris, Mathews, et al.
618 Church St., #300
Nashville, TN 37219
cwelch@farris-law-com

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Jack Robinson, Esquire
Gullett, Sanford, Robinson & Martin
230 Fourth Ave., N., 3d Fl.
Nashville, TN 37219-8888
jrobinsonjr@gsrm.com

Terry Monroe
Competitive Telecom Assoc.
1900 M St., NW, #800
Washington, DC 20036
tmonroe@comptel.org

A handwritten signature in black ink, appearing to read "Terry Monroe", written over a horizontal line.

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2002, a copy of the foregoing document was served on counsel for known parties, via the method indicated, addressed as follows:

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight
☐ Electronic

Michael A. Hopkins
McKenna & Cuneo
1900 "K" St, NW
Washington, DC 20006
mike_hopkins@mckennacuneo.com

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight
☐ Electronic

James Wright, Esq.
United Telephone - Southeast
14111 Capitol Blvd.
Wake Forest, NC 27587
james.b.wright@mail.sprint.com

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight
☐ Electronic

H. LaDon Baltimore, Esquire
Farrar & Bates
211 Seventh Ave. N, # 320
Nashville, TN 37219-1823
don.baltimore@farrar-bates.com

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight
☐ Electronic

Henry Walker, Esquire
Boult, Cummings, et al.
P. O. Box 198062
Nashville, TN 37219-8062
hwalker@boultcummings.com

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight
☐ Electronic

Jon E. Hastings, Esquire
Boult, Cummings, et al.
P. O. Box 198062
Nashville, TN 37219-8062
jhastings@boultcummings.com

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight
☐ Electronic

Timothy Phillips, Esquire
Office of Tennessee Attorney General
P. O. Box 20207
Nashville, Tennessee 37202
timothy.phillips@state.tn.us

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight
☐ Electronic

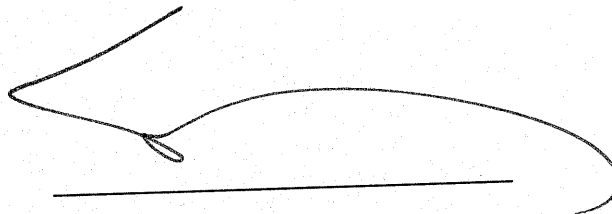
Charles B. Welch, Esquire
Farris, Mathews, et al.
618 Church St., #300
Nashville, TN 37219
cwelch@farris-law.com

- ☐ Hand
- ☒ Mail
- ☐ Facsimile
- ☐ Overnight
- ☐ Electronic

- ☐ Hand
- ☒ Mail
- ☐ Facsimile
- ☐ Overnight
- ☐ Electronic

Jack Robinson, Esquire
Gullett, Sanford, Robinson & Martin
230 Fourth Ave., N., 3d Fl.
Nashville, TN 37219-8888
jrobinsonjr@gsm.com

Terry Monroe
Competitive Telecom Assoc.
1900 M St., NW, #800
Washington, DC 20036
tmonroe@comptel.org

A handwritten signature in dark ink, appearing to read 'Terry Monroe', with a long horizontal line extending to the right.